

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TINA HOLBROOK)	
Claimant)	
VS.)	
)	
COUNTRYSIDE VETERINARY CLINIC, P.A.)	Docket No. 1,003,998
Respondent)	
AND)	
)	
ATLANTIC MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals the July 6, 2004 preliminary hearing Order of Administrative Law Judge Bryce D. Benedict. The Administrative Law Judge (ALJ) ordered respondent and its insurance carrier to provide medical treatment to claimant with Lynn D. Ketchum, M.D., Ronald J. Burt, M.D., and Joseph G. Sankoorikal, M.D., until certified as having reached maximum medical improvement. Respondent's insurance carrier disputes the ALJ's jurisdiction to provide medical treatment with health care providers selected by the employer, notwithstanding previous orders of the court.

ISSUE

Respondent raises the following issue in its Application for Review by Workers Compensation Board:

Whether an employer has the right to direct medical treatment after entry of an order by the court in which an authorized treating physician has been designated.¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds that the appeal of respondent should be dismissed.

¹ Respondent's Application for Review by Workers Compensation Appeals Board.

The Board, in this instance, is uncertain whether to address respondent as the employer or as the insurance company representing the employer in workers compensation matters.

The dispute in this matter centers totally around the appropriate medical treatment to be provided claimant. The Board will not burden this Order with a recitation of the lengthy treatment that has already been provided claimant. Needless to say, claimant has seen numerous health care providers and undergone several different surgeries in order to resolve the problems associated with a June 25, 2001 accident.

Claimant contends that the Board does not have jurisdiction at this juncture of the proceedings to review this preliminary hearing Order, as it deals exclusively with claimant's entitlement to medical treatment.

Not every alleged error in law or fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues, which are deemed jurisdictional:

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide timely notice and written claim of the accidental injury?
- (4) Is there any defense that goes to the compensability of the claim?²

Additionally, the Board may review those preliminary hearing orders where it is alleged that an administrative law judge has exceeded his or her jurisdiction or authority in providing or denying the benefits requested.³

A claimant's entitlement to and orders for medical treatment are issues directly within the jurisdiction of an administrative law judge to determine at preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a

² K.S.A. 44-534a.

³ K.S.A. 44-551.

decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.⁴

The Board concludes that when the need for medical treatment is at issue and the only dispute arises as to whether the employer or the insurance company is responsible for naming that particular health care provider, that that finding is not appealable from a preliminary hearing order. Additionally, the ALJ has the authority to authorize a treating health care provider. The Board finds, in doing so, the ALJ did not exceed his jurisdiction in this matter.⁵ The Board, therefore, does not have jurisdiction over this matter, and this appeal should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Bryce D. Benedict dated July 6, 2004, remains in full force and effect, and the appeal of respondent filed in that matter should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of October 2004.

BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
Denise E. Tomasic, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁴ *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683 P.2d 902 (1984); *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

⁵ K.S.A. 44-551(b)(2)(A).